

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

August 28, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:08od-197

OAHU

Grant of Term, Non-Exclusive Easement to Beecom Hawaii LLP for Revetment
Purposes, Waialae-Iki, Honolulu, Oahu, Tax Map Key: (1) 3-5-058:seaward of
010.

APPLICANT:

Beecon Hawaii LLP. c/o Sachi Hawaii, 88 Piikoi Street, Suite 301, Honolulu, Hawaii
96814.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Waialae-Iki, Honolulu, Oahu, identified
by Tax Map Key: (1) 3-5-058:seaward of 010, as shown on the attached map labeled
Exhibit A.

AREA:

1,460 square feet, more or less, to be determined by DAGS Survey Division.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing
revetment over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair
market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

By a letter dated October 1, 1964 (Exhibit B), the Department indicated that the subject
structure was authorized by the Department of Transportation. It appears that the subject
structure was built before 1974, prior to the enactment of the EIS law and this action is
therefore exempt from Ch. 343.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to pay for an appraisal to determine the one-time payment.

[Note: Applicant already provided the map and description of the subject area.]

REMARKS:

The applicant intends to undertake renovation on his property and a shoreline certification

us triggered. During the process, the subject encroachment was discovered. A copy of the latest survey map is attached as Exhibit C.

According to the letter at Exhibit B, the Board planned to sell the easement at a later date. Due to reasons unknown to the staff, such sale of easement never happened.

OCCL, by their letter attached as Exhibit D, supports the subject request. OCCL further recommends proper signage be placed on the subject area, and demands for retroactive rent. Similar comment regarding the signage is shared by the Office of Hawaiian Affairs (OHA). Staff understands that it is a standard condition in the shoreline encroachment easement document stating that the public shall have access to the easement area. Sec.171-13, Hawaii Revised Statutes does not require a sign be placed on the easement area. Therefore, staff does not support OCCL & OHA's comment about the signage.

Other agencies' responses are tabulated below:

| | |
|--------------------------------------|---|
| Agencies with no objections/comments | State Historic Preservation Division, Department of Facility Maintenance, Department of Hawaiian Home Lands, Board of Water Supply, Division of Aquatic Resources |
| Agencies did not respond | Department of Health, Commission of Water Resource Management, Department of Planning and Permitting |

Pursuant to the letter at Exhibit B, there was an authorization from the Department of Transportation regarding the construction of the subject revetment, staff does not recommend a fine for unauthorized encroachment.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

There are no other pertinent issues or concerns, and staff has no objection to the request.

RECOMMENDATION: That the Board:

1. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 3-5-058:010, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above,

authorize the issuance of a term, non-exclusive easement to Beecom Hawaii LLP covering the subject area for revetment purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

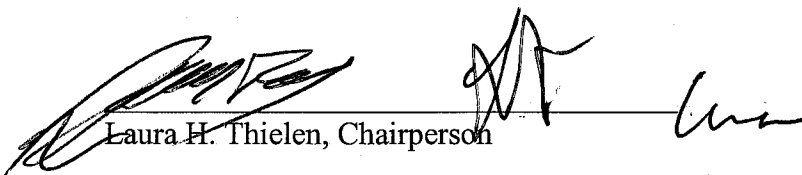
- A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
- B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: 91) 3-5-058:010, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement

Respectfully Submitted,

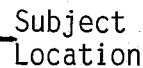


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



October 1, 1964

Bernice P. Bishop Estate
519 Halekauwila Street
Honolulu, Hawaii

Attention: Mr. A. J. Dow

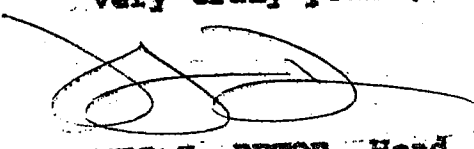
Gentlemen:

Subject: Kai Nani Subdivision--Beach
Protective Structure

Now that the Department of Transportation has issued a permit for construction of the beach protective structure along the shoreline at your Kai Nani Subdivision, you are free to exercise the right-of-entry granted by the Board of Land and Natural Resources at its meeting of April 10, 1964.

We are processing the sale of the easement as well as preparing a document covering Keahia Way and will advise you further when a sale date has been set and the Keahia document is completed.

Very truly yours,



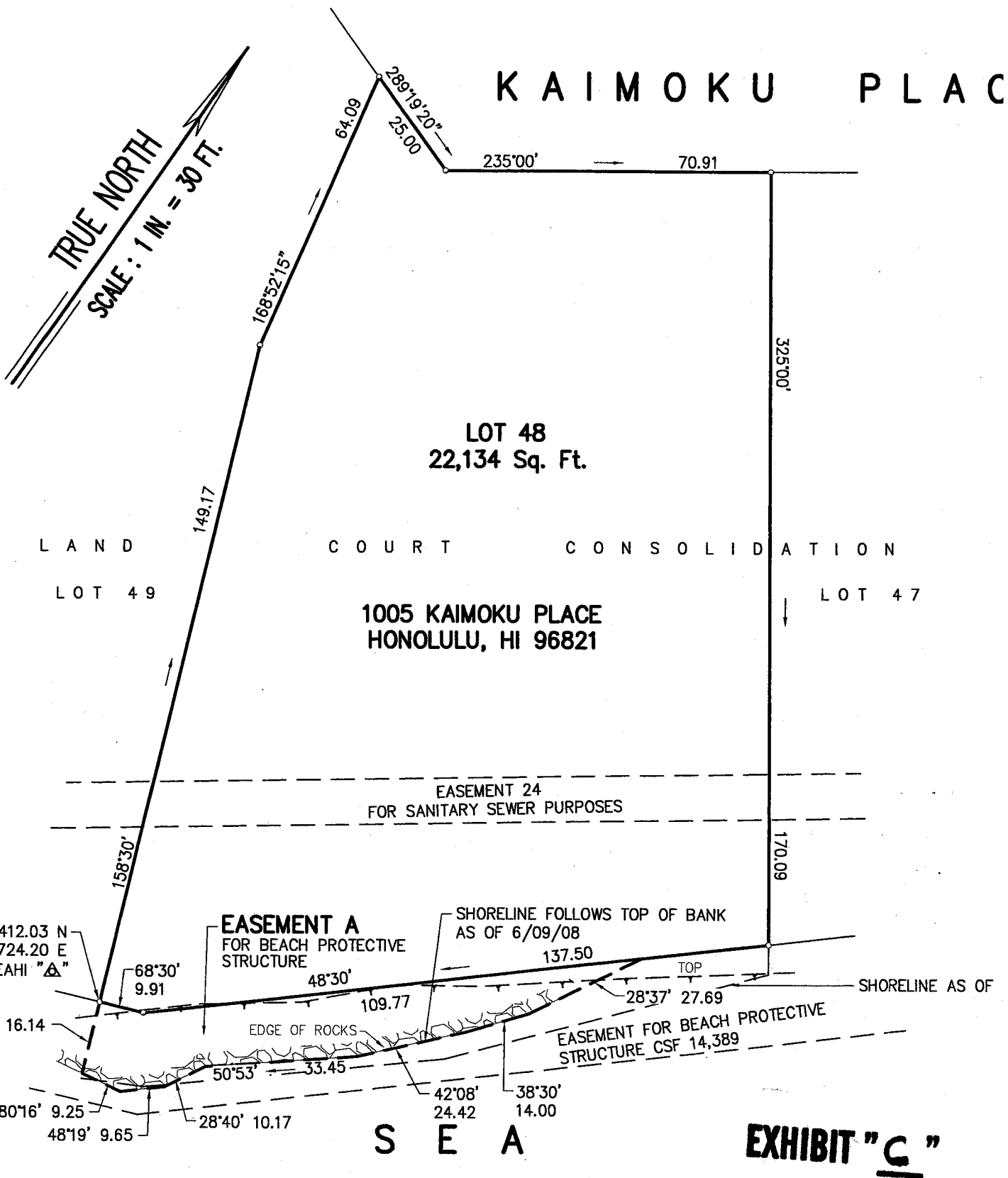
JAMES J. DETOR, Head
Division of Land Management

JJD:vt

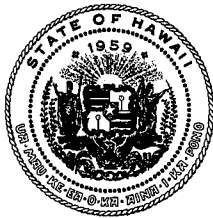
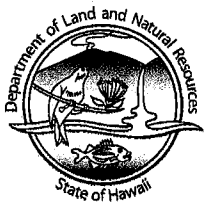
cc: Mr. M. Lepine

Found at dead File of DLNR.
Under Bishop Estate.

EXHIBIT "B"



LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSIONER
WATER RESOURCE MANAGEMENT
RUSSELL Y. TSUJI
FIRST DEPUTY
KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER
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AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORICAL PRESERVATION
KAIKOOE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:CC

JUN - 8 2009

File Number Encroachment: OA-09-06

MEMORANDUM:

TO: Barry Cheung, Oahu Land District
Land Division

FROM: Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

SUBJECT: Request to Resolve State Land Encroachment at 1005 Kaimoku Place,
Honolulu, HI 96821, TMK (1) 3-5-058:010, owner Isao Mita

This is in response to the November 2008 request to resolve the shoreline encroachment at Tax Map Key (1) 3-5-058:010.

According to information and maps contained with the request, there appears to be approximately 1460 square feet of encroachment (revetment) makai of the subject property onto State land.

Office of Conservation and Coastal Lands (OCCL) and Land Division staff were able to locate an authorization for an easement on State lands for the seawall. In addition, original construction plans and proposed location map were found. It appears as though the structure, as originally authorized, runs parallel to the shoreline for numerous parcels in the Kai-Nani subdivision. As a result, the full extent of the structure may not be identified. Additionally, should the OCCL find that the structure has been significantly altered since it was originally authorized, the OCCL may reconsider this finding.

The Board of Land and Natural Resource (BLNR) established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

EXHIBIT "D"

In addition, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments. This form has been completed and submitted.

Surrounding Land Uses:

The surrounding coastal uses are primarily residential, though the sub-division is adjacent to Waialae Golf Course. This parcel is on the eastern side of the golf course.

Beach Resources:

The beach resource in this area is good, with arable beach during low tide conditions, and a predominantly wet beach during spring high tides. The beach resource in the area include a narrow, wet beach fronting and atop the revetment. The narrow beach extends makai from the naupaka hedge, growing on top of the erosion scarp, along most of the adjacent parcels. This area shows signs of very minor, long-term beach accretion.

Public Access:

The beach has limited public access. There are no dedicated public shoreline accesses in the area, and the beach is submerged at spring high tides. Regardless, the beach is currently available for public use.

Effect of Removing the Encroachment on:

Beach Resources: Removal of the revetment will not improve beach resources in the area. The encroachment is almost entirely buried in sand and the beach has equilibrated to the current environmental conditions. Removal of the revetment at this point, without replacing the volume with beach quality sand, would create a significant erosion event, and possibly resulting in beach loss, as the beach returned to equilibrium.

Public Access: OCCL staff has determined that public access would not be improved by removal of the encroaching revetment. Currently, the revetment is almost entirely buried and does not impede access in any way. Removal of the revetment at this point, without replacing the volume with beach quality sand, would create a significant erosion event, and possibly resulting in beach loss, as the beach returned to equilibrium. Beach loss would be a definite detriment to shoreline access, and erosion would be a short-term detriment as the beach adjusted to the new environment.

Affect on Adjacent Properties: Removal of the revetment may impact the western neighbor as the beach adjusts to the loss of volume of the mostly buried revetment.

It has been a general policy and practice of the OCCL to support easement requests that have no discernable effect on beach and recreational resources, and do not act as a detriment to public access. In cases where the encroachment serves as primary erosion control for potentially threatened structures, impacts to the adjacent and upland developments must also be considered.

Upon review and careful consideration of the information gathered on this case, staff has determined that the requirements stated in HRS § 205A, HRS § 183C, and in the OCCL's

evaluation criteria would support a disposition request being processed for the encroachment. The OCCL suggests that proper signage be placed identifying that the revetment and the State land are open to the public. The OCCL suggests that any disposition require the land uses remain unimproved. However, if improvements are allowed the OCCL also suggests a requirement for an integrated public access component to address the mandated lateral shoreline access parameters stated in HRS § 115.

The OCCL also suggests an additional requirement of back payment on the original easement authorization. The DLNR authorized the easement in conjunction with the DOT permitted work. The owners completed the work and have received the benefit of the structure for 45 years, but have never paid their lease.

Please feel free to contact Sea Grant Extension Agent Chris Conger, at the Office of Conservation and Coastal Lands at 587-0049.

CC: OHA, Grant Arnold
DPP, City and County of Honolulu